

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EUGENE JACK BURKE,)	No. ED CV 14-00221-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issue:

1. Whether the Administrative Law Judge ("ALJ") properly

1 For the following reasons, the Court finds that Plaintiff's
2 position is without merit. First, Dr. Kamath assessed that Plaintiff
3 has diabetes, morbid obesity, hypertension, and chronic pain. The ALJ
4 did not err in failing to discuss this portion of Dr. Kamath's
5 opinion, because the ALJ assessed these conditions as severe
6 impairments. (AR 11.)

7 With regard to Dr. Kamath's opinion, which consists of a check
8 mark next to the word "Yes," that Plaintiff would not be able to work
9 full time at his customary job, again, the Court can find no error,
10 because the ALJ did not disagree with this portion of Dr. Kamath's
11 opinion, although it is an opinion as to disability, which is not
12 within the purview of the doctor, but is, rather, an administrative
13 determination. (See 20 C.F.R. §§ 404.1527(d)-(e)(1), (1), 416.927(d)-
14 (e)(1).) The ALJ in fact agreed with Dr. Kamath by finding that
15 Plaintiff cannot perform his past relevant work (AR 17), and thus
16 proceeded to Step Five of the sequential evaluation process by
17 identifying other work that Plaintiff can perform. In this litigation,
18 Plaintiff does not disagree with the ALJ's Step Five determination.
19 Therefore, there is simply no disagreement between the ALJ's
20 conclusions and those of Dr. Kamath, and the Court can find no
21 discernable error in the ALJ failing to point out that he agreed with
22 Dr. Kamath. As such, if one were to even attempt to assess error, at
23 most it would be harmless error. See Molina v. Astrue, 674 F.3d 1104,
24 1111 (9th Cir. 2012).

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1 For the foregoing reasons, the Court finds no merit to
2 Plaintiff's sole assessment of error in the ALJ's decision, and for
3 that reason, affirms the decision and orders the matter dismissed with
4 prejudice.

5 **IT IS SO ORDERED.**

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7 DATED: August 6, 2014 /s/
8 VICTOR B. KENTON
9 UNITED STATES MAGISTRATE JUDGE
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